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No. 01-1147

IN THE

Supreme Court of the United States

TAL TECHNOLOGIES, INC.,

Petitioner,

v.

THE CITY OF OKLAHOMA CITY,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court of Oklahoma

PETITIONER'S SUPPLEMENTAL BRIEF ON NEWLY DEVELOPED ISSUES

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PETITIONER'S SUPPLEMENTAL BRIEF ON NEWLY DEVELOPED ISSUES

Petitioner, Tal Technologies Inc. ("TTI"), pursuant to Rule 15.8, respectfully submits this Supplemental Brief calling this Court's attention to important and relevant caselaw which has been developed since Petitioner's initial filing of its *Petition For A Writ of Certiorari* docketed on February 7, 2002.

In this Supplemental Brief, Petitioner would provide this court with four (4) new developments: (1) The March 13, 2002 Opinion of Judge Thomas J. Corradino, of the Connecticut Superior Court, Judicial District of New England, on condemnation issues with similar circumstances to those in the present case; (2) a new condemnation case decided by the Supreme Court of Connecticut on March 5, 2002 relating to condemning property not included in the redevelopment plan; (3) another new condemnation case decided by the Connecticut Supreme Court (also on March 5, 2002) which relates to integrating the property owner's business as part of the development plan without the need to condemn it; and (4) Interest of several property rights activists/foundations in participating in this case as "friends of the Court" (*Amicus Curiae*), and filing briefs on the merits (and arguing the same), once this Court grants certiorari.

These three recent decisions, as well as national interest in this case, all show that courts throughout the country are wrestling with legal issues surrounding the government's right to take property and transfer it to private parties. The three Connecticut cases all denied the condemnations. Courts in other states, as cited in Petitioner's earlier brief, have granted condemnations in similar circumstances. The splits in authority throughout the states demonstrate how much this Court's guidance is needed.

A. Connecticut Superior Court's Opinion in *Kelo, et al, v. City of New London*

On March 13, 2002, Judge Thomas J. Corradino, of the Connecticut Superior Court for the Judicial District of New England, rendered a 249 page opinion in the case of *Kelo, et al, v. City of New London, et al.*, Case No. 557299 (the "Connecticut Opinion"), reversing the condemnation by the New England Development Corporation (NLDC) of 11 properties in the Fort Trumbull neighborhood of New England, Connecticut. In that case, the ... *"court grants permanent injunctive relief against the demolition of the Plaintiffs' properties ... * * * ... The Statements of Compensation and Certificates of Taking filed against these properties should be dismissed."*

The Connecticut court found that the condemnation of these properties was not necessary to accomplish the development plan which included transferring the properties to a private developer who was planning to build an additional office complex to be available for biotech companies who might provide services to pharmaceutical giant Pfizer who recently moved to the New England area.

The circumstances of the Connecticut case are similar to Petitioner's case here. In the case here, the City of Oklahoma City, after receiving affirmation by the court of the taking of TTI's property under the pretense of public use (i.e., public parks, parking, recreational, etc.), delegated the property taken to the Oklahoma City Urban Renewal Authority ("Urban Renewal"). Urban Renewal was to then transfer TTI's parcels to a private developer for purposes other than the "public use" originally claimed in the City's condemnation proceedings. The use of the property was for the benefit of the other private entity's profit making ventures.

While Petitioner is encouraged by this latest decision of the Connecticut Superior Court, this decision is still in the minority

with only a small number of courts taking an affirmative position toward protecting property rights. These decisions protecting property rights conflict with decisions of many other jurisdictions on the same issue (i.e., condemning from one private owner to transfer to a different private owner of their choice). The Connecticut court recognized this fact when it stated (in page 246) the following: *"The court appreciates that reasonable judges can differ on the issues presented, several appellate courts in other states have taken positions* ***differing*** *from this court's conclusions."* (Emphasis added).

The latest Connecticut Opinion is unpublished at this time. However, due to the large volume of this decision (249 pages), Petitioner is not attaching it as an appendix to this Brief, but a courtesy copy of the decision is filed with the Court's Clerk.

B. Supreme Court of Connecticut, March 5, 2002 Opinion in *Aposporos v. Urban Redevelopment Commissioner of the City of Stanford*, 2002 WL 254005 (Conn.)

In that case, landowners brought action against urban redevelopment commission of declaratory and injunctive relief against condemnation of their properties since they were **not** part of **1963** redevelopment area, but were included by amendment in **1988**. The Connecticut Supreme Court invalidated the condemnation and further held that the city and urban redevelopment commission needed to make a renewed finding of blight, give notice, and hold a public hearing before they could condemn the property.

This Connecticut case is similar, to some degree, to the case here. The Oklahoma City's MAPS Master Plan (the initial 1993 and as amended in 1994 and 1995) did not include TTI's property as part of its development plan. On March 24, 1997, the City initiated condemnation of TTI's property alleging it needed TTI's property for parking, parks, recreational, etc. in support of its MAPS projects. However, approximately eight

(8) months AFTER the City initiated the condemnation, the City transferred title of TTI's property to Urban Renewal which intended to transfer TTI's parcels to a private developer, and added TTI's property to an amended redevelopment plan, which was originally developed by Urban Renewal in the late 1980's early 1990's, a plan that did not include TTI's property at that time, but was amended on June 26, 1997 – three (3) months after the City initiated the condemnation Petition against TTI's property.

The case here is even more inadequate than the Connecticut case, because the record here clearly shows: (1) the City's MAPS Master-Plan (1993-1995) did not include TTI's property; (2) City decided to include TTI's parcels in the MAPS plan without officially modifying the MAPS Master-Plan; (3) the City transferred title of TTI's condemned property to Urban Renewal while the case was still pending without amending its condemnation Petition; (4) the City continued to falsely represent to the trial court that it needed TTI's property for public parking, a park, and public recreational facilities; (5) Urban Renewal amended its plan without holding public hearing nor determining that TTI's property is blighted or slum (a statutory requirement for Urban Renewal to exercise its eminent domain power)[1]; (6) Urban Renewal failed to intervene as a party in interest in TTI's condemnation case (as of this date); and (7) even if Urban Renewal attempts to exercise its eminent domain power, they would have a hard time succeeding since TTI's property is located on the edge of the MAPS Canal - making it one of the most expensive and prime property in Oklahoma.

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[1] In Oklahoma, municipalities' eminent domain power is restricted to specific public uses such as roads, parks, recreational, public parking, utilities, etc., while the Urban Renewal's eminent domain power extend to redevelopment of slum and blighted areas.

Following the Connecticut Supreme Court's decision in *Aposporos, supra*, the condemnation here should be invalidated, and if Urban Renewal wishes to condemn TTI's property, they should initiate a new proceeding and follow the statutory requirements relating to Urban Renewal's Eminent Domain power.

C. Supreme Court of Connecticut, March 5, 2002 Opinion in *Pequonnock Yacht Club, Inc., v. City of Bridgeport, et al.* 2002 WL 254005 (Conn.)

In that case, the Connecticut Supreme court affirmed the trial court's conclusion that the defendants (the City of Bridgeport and its redevelopment agency) improperly refused to attempt to integrate the plaintiff's property into the redevelopment plans. The Connecticut Supreme Court held that the defendants' failure to consider integration of the plaintiff's property into the redevelopment plan was unreasonable and, therefore, the taking of the plaintiff's property by eminent domain was not necessary.

This case is similar to the case here, as shown by the record, TTI has submitted to the City, as early as 1995 (2 years BEFORE the condemnation proceeding began) a specific plan to develop its canal-front property for a mixed use to include retail shops, restaurant, entertainment venues, and public parking. Even if assuming, *arguendo*, that the June 26, 1997 "Amended Plan" (3 months after the City initiated the condemnation here) was amended "legally", and assuming, *arguendo*, that the City did not deceive the court and had informed it of its new development plan (i.e., to use TTI's property for private retail, restaurants, etc.), the City should have integrated TTI's property and its development plan as part of the City/Urban Renewal's modified or amended plan as TTI's plan and design was consistent with Urban Renewal's amended plan and design.

The City not only failed to do so, but has continued claiming that it needs TTI's property for public parking, park, recreational, etc., when in fact, the developer chosen by Urban Renewal (with the City's approval) COPIED TTI's development plan and intend to use TTI's property for the exact use that TTI planned prior to the condemnation (i.e., for retail shops, restaurants, etc.). It should also be noted from the Record that on July 28, 1997 the Urban Renewal accepted TTI's development plan (as part of a proposal submitted by TTI's associate CCBT), but in May 20, 1998 decided to "de-select" CCBT, and furthermore, take TTI's property and give it to its competitor. See Appendix, 61, ¶ 9 and Appendix 62 ¶ 12 (Petitioner's 10/28/99 Motion to Reconsider).

D. Amicus Interest In Arguing the Merits in This Case

Since the February 7, 2002 filing of its Petition for A Writ of Certiorari with this Court, Petitioner has received several calls and other communications from numerous interest groups supporting Petitioner's position, and advising Petitioner of their interest in participating in this case. Since these groups were not aware of TTI's petition prior to its February 7, 2002 filing, and due to the short response time, they were unable to timely file Amicus Curiae briefs in support of granting certiorari. However, the following entities express their intent to file Amicus Curiae briefs on the merits, once this Court grants certiorari, and if given the opportunity, participate in the oral argument before this Court: (1) the Institute for Justice ("IJ"), Washington, D.C.; (2) The American Association of Small Property Owners ("AASPO"), Washington, D.C.; (3) Pacific Legal Foundation ("PLF"), Sacramento, CA; (4) Tim Bishop, of Mayer Brown & Platt (representing American Farmers and other interest groups), Chicago, Ill; (5) Virginia Property Rights Coalition ("VPRC"), Blacksburg, VA; (6) The Commonwealth Foundation, Harrisburg, PA; (7) Market Square Association, Pittsburgh, PA; and (8) majority members of the Castle

Coalition (with members from approximately 15 states)[2].

E. National Concern – Abuse of Eminent Domain

Just a few days ago, on Monday, March 18, 2002, FOX New published a story titled: *"Critics Accuse Local, State Government of Distorting Eminent domain Laws."* The story explains the growing national problem of abuses of eminent domain power under the gist of "economic development". The subtitle of this article better explain the main issue of this article: ***"Local and state governments are increasingly using eminent domain laws meant to allow them to confiscate property for public works projects to instead grab land to make way for private developments and the fat tax revenues they bring, ..."*** This article can be found in FOX News website at: www. foxnews.com/story/0,2933, 48110,00.html.

CONCLUSION

The latest developments presented in this Supplemental Brief further support the need for this Court to grant Certiorari and review the issues raised here. This is important since resolution of these questions will help resolve the nationally growing number of cases challenging the constitutionality of taking for private use as well as eliminate the growing number of conflicting rulings in different jurisdictions.

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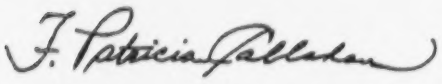
[2] Petitioner has been advised that the Castle Coalition members may file a joint Brief on the merits with other organizations listed above and use the services of the Atlantic Legal Foundation, New York City, NY.

Respectfully submitted.



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